

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Abdullah Mallick Holmes,

Plaintiff,

vs.

Dorchester County Detention Center; T.A. Van Doran,
Detention Director; Richard Darling, Operations
Lieutenant,

Defendants.

) C/A No. 0:11-1325-JMC-PJG

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**REPORT AND
RECOMMENDATION**

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Plaintiff, Abdullah Mallick Holmes, ("Plaintiff"), proceeding pro se, brings this action pursuant to 42 U.S.C. § 1983. This matter is before the court pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) DSC. Plaintiff is a state prisoner and files this action *in forma pauperis* under 28 U.S.C. § 1915. Having reviewed the Complaint in accordance with applicable law, the court concludes that it should be summarily dismissed as to defendant "Dorchester County Detention Center."

INITIAL REVIEW GENERALLY

Title 28 U.S.C. § 1915A(a) requires an initial review of a "complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity." The *in forma pauperis* statute authorizes the District Court to dismiss a case if it is satisfied that the action is frivolous or fails to state a claim on which relief may be granted. 28 U.S.C. §1915(e)(2)(B)(i) and (ii). As a *pro se* litigant, the petitioner's pleadings are accorded liberal construction and held to a less stringent standard than formal pleadings drafted by lawyers. See Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam). The requirement of liberal construction does not mean that the court can ignore

a clear failure in the pleading to allege facts which set forth a claim cognizable in a federal district court. Weller v. Dept. of Social Services, 901 F.2d 387, 391 (4th Cir. 1990).

DISCUSSION

Plaintiff's Complaint in this case (ECF No. 1), filed on June 1, 2011, named "Dorchester County Detention Center," "T.A. Van Doran, Detention Director," and "Richard Darling, Operations Lieutenant" as Defendants." Plaintiff alleges that the defendants failed to protect Plaintiff from a substantial risk of serious harm while he was incarcerated in the Dorchester County Detention Center. See Farmer v. Brennan, 511 U.S. 825 (1994). Plaintiff alleges that he was assaulted on three separate occasions by other inmates and seeks relief pursuant to 42 U.S.C. § 1983.¹

A claim for relief under § 1983 must sufficiently allege that the plaintiff was injured by "the deprivation of any [of his or her] rights, privileges, or immunities secured by the [United States] Constitution and laws" by a "person" acting "under color of state law." See 42 U.S.C. § 1983; Monell v. Dep't. of Soc. Serv., 436 U.S. 658, 690 & n.55 (1978) (noting that for purposes of § 1983 a "person" includes individuals and "bodies politic and corporate"); see generally 5 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1230 (2002). It is well settled that only "persons" may act under color of state law, therefore, a defendant in a § 1983 action must qualify as a "person." For example,

¹ Not itself a source of substantive rights, § 1983 is the procedural mechanism through which Congress provided a private civil cause of action based on allegations of federal constitutional violations by "person(s)" acting "under color of state law." See Jennings v. Davis, 476 F.2d 1271 (8th Cir. 1973). The purpose of § 1983 is to deter state actors from using the badge of their authority to deprive individuals of their federally guaranteed rights and to provide relief to victims if such deterrence fails. See McKnight v. Rees, 88 F.3d 417 (6th Cir. 1996). To state a cause of action under 42 U.S.C. § 1983, a plaintiff must allege that: (1) individual defendant(s) deprived him of a federal right, and (2) did so under color of state law. Gomez v. Toledo, 446 U.S. 635, 640 (1980); see Hall v. Quillen, 631 F.2d 1154, 1155-56 (4th Cir. 1980).

several courts have held that inanimate objects such as buildings, facilities, and grounds are not “persons” and do not act under color of state law. See Allison v. California Adult Auth., 419 F.2d 822, 823 (9th Cir. 1969) (California Adult Authority and San Quentin Prison not “person[s]” subject to suit under 42 U.S.C. § 1983); Preval v. Reno, 57 F. Supp.2d 307, 310 (E.D. Va. 1999) (“[T]he Piedmont Regional Jail is not a ‘person,’ and therefore not amenable to suit under 42 U.S.C. § 1983.”); Brooks v. Pembroke City Jail, 722 F. Supp. 1294, 1301 (E.D.N.C. 1989) (“Claims under § 1983 are directed at ‘persons’ and the jail is not a person amenable to suit.”). Plaintiff’s Complaint, insofar as it names Dorchester County Detention Center as a defendant in this case, does not name a “person” subject to a § 1983 claim. “Dorchester County Detention Center” is not a proper defendant upon whom the United States Marshals Service could effect service of process and against whom relief could be granted by this court. Accordingly, “Dorchester County Detention Center” should be dismissed as a defendant and terminated from the docket.

RECOMMENDATION

Accordingly, the court recommends that Plaintiff’s Complaint be partially dismissed as to Defendant Dorchester County Detention Center without prejudice and without issuance and service of process. See Denton v. Hernandez, 504 U.S. 25 (1992); Neitzke v. Williams, 490 U.S. 319 (1989); Haines v. Kerner, 404 U.S. 519 (1972); Brown v. Briscoe, 998 F.2d 201 (4th Cir. 1993); Todd v. Baskerville, 712 F.2d 70. (4th Cir. 1983); see also 28 U.S.C. § 1915(e)(2)(B). The Complaint should be served on the remaining defendants.

June 29, 2011
Columbia, South Carolina


Paige J. Gossett
UNITED STATES MAGISTRATE JUDGE

Plaintiff’s attention is directed to the important notice on the next page.

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk
United States District Court
901 Richland Street
Columbia, South Carolina 29201

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984).